BACKGROUND PAPER FOR HEARING

BOARD OF REGISTERED NURSING

IDENTIFIED ISSUES, QUESTIONS FOR THE BOARD AND BACKGROUND CONCERNING ISSUES

PRIOR SUNSET REVIEW: The Board of Registered Nursing was last reviewed by the Joint Legislative Sunset Review Committee (JLSRC) six years ago (1996-97). The JLSRC and the Department of Consumer Affairs (DCA) identified several issues and made the following recommendations: (1) the State should continue regulation of the practice of nursing; (2) the Board of Registered Nursing should continue as the agency responsible for the regulation of nursing; and (3) support the Board in seeking statutory authority to certify Clinical Nurse Specialists.

In September 2002, the Board submitted its required sunset report to the JLSRC. In this report, information of which is provided in Members' binders, the Board described actions it has taken since the Board's prior review. To address one of the issues presented during its last review, the Board sought a change in statute and received the authority to certify Clinical Nurse Specialists. It also implemented a number of programmatic and operational changes and enhancements, including the following:

- Over the course of the last six years, the Board has implemented a number of Internet-based services for the public and licensees including a general information Web page and a Web site to assist in the recruitment and retention of registered nurses. The Board also has a system for online license renewal and verification.

- In the area of licensing, the Board replaced its paper license with a tamper-resistant plastic card to reduce the risk of fraud and licensee impersonation, implemented Live Scan procedures for fingerprinting applicants, started sending the Nursing Practice Act to all new licensees, streamlined out-of-state endorsements, conducted business process improvement for licensing staff, and is now transitioning to a new testing service which will simplify the testing process for applicants.

- For the enforcement program, the Board created a case management system for tracking cases, increased the number of probation monitors, implemented their cite and fine system, and complied with the federal reporting requirements for those disciplined by the Board.

- The Board also participated in a number of legislative issues and discussions including those regarding the use of unlicensed personnel, staffing ratios, and nursing shortages.

The following are unresolved issues pertaining to this Board, or areas of concern for the JLSRC, along with background information concerning the particular issue. There are also questions that staff has asked concerning the particular issue. The Board was provided with these issues and questions and is prepared to address each one if necessary.

CURRENT SUNSET REVIEW ISSUES

BOARD ADMINISTRATION ISSUES

ISSUE #1: The strategic plan for the Board may need to be updated to focus on the low level of satisfaction regarding consumer complaint handling.

Question #1 for the Board: *Based on the results of the Consumer Satisfaction Survey, does the Board believe that it is meeting the goals and objectives of their strategic plan? How does the Board annually update their strategic plan and does the Board believe that another in-depth strategic plan is now necessary based on the results of this survey? What immediate actions can the Board take to deal with this low level of consumer satisfaction regarding the handling of their complaints?*

Background: In 1994, the Board undertook an in-depth strategic planning project to ensure its effectiveness and responsiveness to the public that it serves. The initial strategic plan was completed and adopted in February 1995. The Board submits updated plans annually to the Department for approval through Agency and the Governor's Office. As required by the Joint Committee, the Board completed a Consumer Satisfaction Survey to a random sample of complainants chosen over the past four years. There was generally a low level of satisfaction with complainants regarding how long it took the Board to respond to their complaint and how their complaint was finally resolved. One of the first objectives listed within the Board's strategic plan is to "identify customer expectations for services and meet or exceed them."

ISSUE #2: It is unclear when and if the Board believes that regulations will be necessary to deal with scope of practice issues for registered nurses.

Question #2 for the Board: *If questions arise regarding the practice of nurses or those certified in an advanced nursing field, how does the Board respond to these inquiries? At what point in time would regulations be appropriate to clarify or interpret a particular area of practice for nurses?*

Background: An issue has been raised regarding the adoption of the Board of "advisory opinions" regarding the practice of advanced nursing in this state rather than adopting regulations to interpret the particular scope of practice for nurses who have been certified in an area of advanced practice. In particular, one area of concern is the practice of Certified Registered Nurse Anesthetist. The Board recently issued a letter where it stated that "It is the position of the Board of Registered Nursing that physician supervision is not required for certified registered nurse anesthetists." It does not appear as if the Medical Board is in agreement with this opinion. Also, the Attorney General's Office has in the past advised boards that a California Supreme Court ruling, Tidewater Marine Western, Inc. v. Victoria L. Bradshaw, as Labor Commissioner [(1996) 14 Cal.4th 557], has narrowed the instances in which an agency may issue opinions or procedures without adopting them as regulations.

BOARD COMPOSITION ISSUES

ISSUE #3: The current composition of the Board is a 2 to 1 majority of professional members versus public member, with 5 nurses, 1 physician and 3 public members. Almost all health related consumer boards have no more than a simple majority of professional members.

Question #3 for the Board: *Would restructuring the composition of the board to achieve greater public representation by adding two public members affect the Board's mission in anyway? Would the Board support legislative efforts to increase public membership?*

Background: The Board's current composition of six professional and three public members may not be in the best interest of consumer protection. Generally, a public member majority for occupational regulatory boards, or greater representation of the public where current board membership is heavily weighted in favor of the profession is preferred for consumer protection. Since any regulatory program's primary purpose is to protect the public, increasing the public's representation on this Board assures the public that the profession's interests do not outweigh what is in the best interest of the public. Requiring closer parity between public and professional members is also consistent with both this Committee's and the Department's recommendations regarding other boards that have undergone sunset review over the past eight years.

The Board indicates in its 2002 Sunset Review Report (Report) that it believes the current size and composition of the Board has proven to be effective. Nine members, as it argues, provide a reasonable size for full participation, constructive interaction, and diverse viewpoints. However, considering the proactive role that this Board will have to assume in the future regarding healthcare of the public and evaluating nursing trends in order to make important policy decisions, it would seem appropriate to add more public members to this Board. This Board also has one of the largest licensing populations of any of the other health-related consumer boards.

ISSUE #4: The Board has no statutory requirement that at least one nursing member of the Board be a registered nurse in advanced practice.

Question #4 for the Board: *Why would the Board not seek a statutory change to assure that at least one of the registered nurse members of the Board will include at least one direct-practice registered nurse who is an advanced practice nurse, so that it can continue to receive this level of expertise in the future?*

Background: The Board indicates that designating one nursing member as an advanced practice nurse would better reflect the reality of today's healthcare scene in which direct care of patients by advanced practice nurses has grown dramatically. However, the Board states that it does not perceive a need, at this point, to seek statutory changes designating a Board position specifically for an advanced practice nurse.

BUDGETARY ISSUES

ISSUE #5: The Board had to suspend actions on disciplinary cases in fiscal year 2000/01 and again in January 2002 because of budget shortfalls.

Question #5 for the Board: *What actions did the Board take to resume appropriate funding levels for its enforcement program? What recommendations does the Board have to assure that action to be taken by the AG's Office on cases will not be suspended in the future? Are there currently any backlog of cases?*

Background: There was a budget shortfall in fiscal year 2000/01 due to the increased number of cases transmitted to the AG's Office and a backlog of cases pending at the AG's Office. Consequently, in April 2001, the Board suspended action on all cases pending at the AG's Office, except those cases involving patient death, crimes of violence, sexual assault, or other acts that would pose a direct threat to patient safety. The same actions were taken in January 2002, due to a budget shortfall. A Budget Change Proposal was submitted for enforcement costs in spring 2001. The fiscal year 2001/02 component was denied, and the 2002/03 component was approved on a two-year limited-term basis.

ISSUE #6: The Board projects that it will incur a deficit in its budget by fiscal year 2004/05, unless the Board begins to receive part of the payment on the loan made to the general fund.

Question #6 for the Board: *Does the Board have any indication of when the loan to the General Fund will be paid back and what the terms or time frame may be? At what time will the Board have to consider an increase in fees to assure that it can avoid a deficit and continue the level of funding necessary for its enforcement program? When was the last fee increase made by the Board?*

Background: The statutory reserve fund limit for the Board is 24 months (B&P Code Section 128.5). The Board has maintained a prudent reserve to meet future potential cost increases, address unforeseen contingencies, and bridge the gap between expenditures and unexpected declines in revenues. However, it is projected that the current fund reserve (13.8 months) will dramatically decline within fiscal year 2002/03 because the Board made a $12 million loan to the General Fund to assist in offsetting the General Fund shortfall. The Board will work in conjunction with the Department of Consumer Affairs Budget Office and the Department of Finance to closely monitor the Board's fund condition. The Board does not plan to raise fees unless there are no other alternatives to reconcile any deficit created by the loan to the General Fund.

ISSUE #7: The Board is developing backlogs in the licensing of nurses, in conducting school approval reviews, as well as in other program areas because of lack of staffing.

Question #7 for the Board: *What sort of backlogs are now occurring in the Board's licensing and nursing program approval services and what action does the Board believe is necessary to assure that both these services can be provided on a timely basis?*

Background: The Board is responsible for licensing nurses and approving pre-licensure nursing programs on a timely basis; however, the Board currently has seven staff vacancies in these program areas, and even with overtime efforts, backlogs have developed in licensing new registered nurses and conducting school reviews, as well as other program areas. The Board submitted a hiring freeze exemption for the vacancies but was denied in July 2002.

NURSING PRACTICE ISSUES

ISSUE #8: California is experiencing and will continue to experience a critical shortage of registered nurses.

Question #8 for the Board: *What specific efforts is the Board making to deal with this public health care crisis and what recommendations does the Board have to resolve the current, and prevent the future shortages of nurses in California?*

Background: As stated by the Board, the well-documented and publicized shortage of registered nurses in the workforce is the most critical issue impacting nursing. It is projected that California will need approximately 67,500 more registered nurses by 2006, and that we are rapidly approaching a shortfall of 25,000 nurses to meet the current health care needs of Californians. As explained by the Board, such a shortfall will create a public health crisis, place consumers at risk, and have a crippling effect on healthcare delivery. The Board indicates that it has been at the forefront of researching and strategizing to resolve the issue. Board efforts include: identification and elimination of barriers to licensing; approval of new pre-licensure nursing programs; and active involvement with the Governor's Nurse Workforce Initiative. Barriers to resolution of the current and prevention of future shortages include the limited availability of current registered nurse data and a pre-licensure nursing education system that, in some instances, impedes rapid student matriculation.

ISSUE #9: It is unclear how well the Board's scholarship and loan repayment program is functioning and whether it may be under-funded.

Question #9 for the Board: *Please explain the current operation of this program and whether the $5.00 assessment on license renewal fees is adequate.*

Background: Registered nurses pay a $5.00 assessment with their license renewal fees to support a scholarship and loan repayment program. The program's focus is to increase the number of registered nurses working in medically underserved areas and to increase the number of registered nurses from underrepresented ethnic groups.

ISSUE #10: It is unclear why the Board should still be involved in the collection of information regarding the practice of registered nursing, as required by Section 2786 of the Business and Professions Code, and how extensive this data collection be.

Question #10 for the Board: *Does the Board believe that it should still be mandated to collect information regarding the practice of nursing in California and that the current statutory mandate lacks some specifics in what data should be collected and how would a new statutory mandate resolve the funding problem with performing this survey? Does the Board currently collect information upon licensure (or upon renewal of a license) about the active status of the licensee and what area of nursing they practice or are employed?*

Background: Pursuant to Section 2786 (c), the Board is required to perform an analysis of the practice of registered nursing at least every five years, to be used to assist in the determination of required pre-licensure nursing program subjects, validation of licensing examination, and assessment of the current practice of nursing. However, the Board indicates that no funding has been appropriated for the survey. The last survey conducted by the Board was in 1997. The Board is recommending that there be a statutory mandate for it to conduct research related to nursing demographics, workforce, and education at least every three years with funding appropriated from the Board's special fund.

It would appear that the Health and Human Services Agency, which is implementing the Governor's Nurse Workforce Initiative, and coordinating other agencies in its efforts to deal with the nursing shortage, may be the more appropriate agency to conduct future studies regarding nursing practice throughout this state. Also, there appears to be other private/public organizations as well as educational institutions that are conducting similar studies.

ISSUE #11: The Board is concerned that school personnel may be providing nursing services that in other settings would be prohibited.

Question #11 for the Board: *What recommendations does the Board have to resolve the increasing number and complexity of school health-related issues and to ensure that pupils receive safe and appropriate care?*

Background: As explained in the Board's Report, California's public school children are being placed at risk due to inappropriate use of unlicensed school personnel to provide nursing care. The major contributing factor, as the Board argues, is a conflict between the Nursing Practice Act and the Education Code that permits unlicensed personnel to perform nursing tasks that in other settings they would be prohibited from performing. For the past several years, the Board has worked collaboratively with the California Department of Education on school health-related issues. However, in spite of these efforts, issues pertaining to nursing care in schools continue to increase. Given the existing statutes and the shortage of registered nurses in schools, it is anticipated that the situation will only worsen.

ISSUE #12: Should a separate statutory definition for "advanced practice nurse" be created?

Question #12 for the Board: *Why does the Board want to create a statutory definition for term "advanced practice nurse?" Will this possibly cause confusion regarding their particular special expertise and knowledge in one of the currently titled categories of practice?*

Background: Nationally, the term "advanced practice nurse" refers to four categories of registered nurses with education and expertise beyond basic registered nurse education. The four categories are nurse anesthetists, nurse-midwives, nurse practitioners, and clinical nurse specialists. In discussions with the public, consumer groups, other professional organizations, and the legislature, the phrase "advanced practice nursing" helps identify these groups of certificated nurses and helps identify their special expertise and knowledge, as stated by the Board. In this era of healthcare reform, the Board is finding increasing need to be able to identify these categories of registered nurses with advanced skills and knowledge through one phrase, and to protect this phrase from misappropriation by individuals who do not understand that the advanced practice nurse is a registered nurse with advanced training. Once this phrase is defined in statute, the Board indicates that it would be able to consolidate some of the advanced practice regulations under this over-riding phrase, rather than individually changing each body of regulations for each category of advanced practice nursing.

ISSUE #13: Should the current terms "furnishing or ordering drugs or devices," as authorized by Section 2746.51 of the Business and Professions Code for certified nurse-midwives and Section 2836.1 for nurse practitioners, be changed to "prescribing drugs or devices," clarifying in effect the prescriptive authority for these advanced practice nurses?

Question #13 for the Board: *Why does the Board believe such changes in terms are necessary? What are the distinctions, if any, between the furnishing or ordering of drugs and devices and prescribing of drugs and devices?*

Background: A furnishing number enables nurse-midwives and nurse practitioners, under standardized procedures, to write a medication order on a transmittal slip (similar to a physician's prescription form) for a pharmacist to fill; the advanced practice nurse thereby "furnishes" a drug to a patient. As argued by the Board, two major problems exist with the terms "furnishing" and "transmittal orders." The public and other healthcare providers do not understand what the terms mean. Medication orders and prescription are synonymous. Furnishing and transmittal orders are confusing. The second problem, however, is more serious. In some instances, pharmacists refuse to fill a medication order on transmittal slips on the basis it is not a prescription. As a result, the patient does not obtain needed medication. The Board is very concerned about this practice and strongly recommends change. Deletion of the word furnishing eliminates the ongoing confusion regarding this word and facilitates the filling of medication orders by pharmacists. Legislation enacted in 1999 and 2001 resulted in nurse practitioners and nurse-midwives being eligible for Drug Enforcement Administration numbers, which facilitated their furnishing of controlled substances. However, the new laws did not resolve the underlying problems of consumer access to medications and consumer confusion created by use of the term "furnishing."

EDUCATION AND NURSING PROGRAM APPROVAL ISSUES

ISSUE #14: Does the current education system for the nursing profession need to be reformed to increase student access and allow for timely completion of nursing programs?

Question #14 for the Board: *What specific reforms are necessary to the educational system and nursing programs and what are the best ways to bring this about?*

Background: As indicated by the Board, colleges and universities play a critical role in the amelioration of the nursing shortage by preparing new nursing graduates to enter the workforce. However, there are barriers in the current educational system that prevent registered nursing students from matriculating in a timely manner. The system needs to be reformed, as recommended by the Board, including standardization and alignment of prerequisite and co-requisite courses, in order to increase access and shorten the length of time for completion of pre-licensure nursing programs.

ISSUE #15: Are there ways in which the Board could improve its approval process for pre-licensure nursing programs and thereby facilitate the approval of more programs?

Question #15 for the Board: *How many pre-licensure programs are rejected by the Board, and for those rejected, how many have received voluntary accreditation by the National League for Nursing (NLN) or the Commission on Collegiate Nursing Education (CCNE)? Are there reasons why accreditation by the NLN or the CCNE is not sufficient for purposes of approving a pre-licensure nursing program? What barriers do agencies generally face in attempting to implement a nursing program? Are there other strategies the Board could use to facilitate the approval process and expand the current number of nursing programs? Has the Board considered "provisional accreditation" for programs applying to the Board for approval, so they have time to meet all the requirements for full approval?*

Background: Approval of pre-licensure nursing programs is an integral component of the Board's operation. The purpose of approval is to ensure the program's compliance with statutory and regulatory requirements. Approval of advanced practice nursing (i.e., nurse practitioner and nurse-midwifery) programs is voluntary and at the request of the program. Board approval of advanced practice programs is advantageous to program graduates because it facilitates their obtaining Board certification as a nurse practitioner or nurse-midwife. Currently, there are ninety-eight (98) approved pre-licensure nursing programs and thirty (30) approved advanced practice nursing programs, as follows:

Pre-licensure Programs

- 71 associate degree (ADN)
- 22 baccalaureate degree programs (BSN)
- 5 entry-level master's degree programs (ELM), 3 of which are at nursing schools that have a Board-approved baccalaureate program

Advanced Practice Nursing Programs

- 25 nurse practitioner programs
- 5 nurse-midwifery programs

Each approved nursing program, pre-licensure and advanced practice, is reviewed every five years. Although the standards for review are different, the same process is used for both. When a school has both a pre-licensure and advanced practice program, the reviews are scheduled concurrently. The approval process requires writing of a self-study by the program and an on-site review by one or two nursing education consultants (NECs), depending on the size and complexity of the program. Both the program self-study and the review by the NECs are directly correlated to statutes and regulations contained within the Nursing Practice Act. The on-site review of the nursing program includes meetings with administrators, students, and healthcare agency personnel to ensure statutory/regulatory compliance and consumer (student) satisfaction.

The Board grants continued approval to the program if it is in compliance with all applicable rules and regulations. When programs are found to be in noncompliance, the programs are placed on deferred action and are allowed a specified time to correct area(s) of noncompliance. NECs work closely with program directors to assist with their efforts to be granted continued approval. When a program is unable to correct the area(s) of noncompliance, or demonstrates a lack of progress toward correcting the noncompliance, the program is placed on warning status. Being placed on warning status is a rare and serious Board action in that the Board is warning the school of its intent to close the nursing program. During the last six-year period, two pre-licensure programs and one advanced practice nursing program were placed on warning status. Each of the programs responded quickly to correct identified areas of noncompliance.

During the last six years, the Board reviewed 115 pre-licensure programs; 36 (31%) of the programs were in noncompliance. The primary area of noncompliance was adequacy of resources. Of the 37 advanced practice nursing programs reviewed, 9 (24%) were in noncompliance. Eight of the nine advanced practice programs in noncompliance were nurse practitioner programs. The primary area of noncompliance related to granting credit to students for previous education and experience.

ISSUE #16: The number of applicants to pre-licensure nursing programs is declining and some programs are unable to accommodate the number of students who have applied.

Question #16 for the Board: *Does the Board have any recommendations about how admissions could be increased for pre-licensure programs and how the number of students graduating from nursing programs could be significantly increased? How many impacted programs are there where there are more applicants than slots available for students?*

Background: All pre-licensure nursing programs submit a completed Annual Report Survey (Survey) each fall. The Survey completed for 2001 (August 1, 2001 to July 31, 2002) shows that for all types of pre-licensure programs there were about 10,000 applications received. This, however, was a decline of more than 3,000 applicants from the prior 2000 Survey. The number of admission slots filled were about 6,200. This was an increase of about 420 students from the prior 2000 Survey. The total number of graduates from all pre-licensure programs was about 5,200 in 2001. The number of graduates seems to have remained rather constant for almost the past eight years.

EXAMINATION ISSUES

ISSUE #17: The Board has been experiencing declining pass rates on its national licensing examination (NCLEX-RN) for candidates applying for licensure.

Question #17 for the Board: *What does the Board believe the problems are related to the declining pass rates for nursing candidates who sit for the NCLEX-RN and what recommendations does the Board have to assist both candidates and nursing programs to improve their pass rates?*

Background: The California first-time NCLEX-RN passage rate is generally comparable to the national rate, e.g., 81.71% for California and 84.19% nationwide in 2000/01. However, the national passage rate has been consistently higher and the difference between the two rates has increased slightly on an annual basis. This increasing discrepancy, coupled with the Board's concern about the increasing number of pre-licensure nursing programs with an annual pass rate of 70% or less, resulted in the Board's establishment of the NCLEX-RN Task Force in February 1999. The goals of the Task Force were to:

- Identify factors that increased and decreased the NCLEX-RN pass rates for first-time takers.
- Describe factors that appear to improve the potential for graduates of nursing programs to pass the NCLEX-RN examination on the first attempt.
- Provide recommendations to the Board of Registered Nursing and California prelicensure nursing programs for potential use to improve the NCLEX-RN pass rate.
- Identify research questions for consideration by the NCSBN Research Committee.

The Task Force conducted surveys, literature searches, and student interviews. The California nursing program surveys, student interviews, and one published study identified significant student characteristics affecting their ability to pass the NCLEX-RN on the first attempt. The most consistently identified characteristics were students for whom English is a second language, who work 20 hours a week or more, and who have family responsibilities at home. Academic policies that permit students to withdraw from prerequisite science courses when they are failing so they can retake them multiple times was a significant academic policy identified by nursing program directors.

Additional factors identified were delay by graduates of five months or more between graduation and taking the NCLEX-RN and limited knowledge by nursing faculty about the current NCLEX-RN Test Plan. Significant factors affecting Community College nursing programs were the 1990 and 1993 changes in Title 5 regulations that eliminated prerequisite and co-requisite requirements for admission to Community Colleges' nursing programs. The inability to have supplemental selection criteria for admission to the nursing major adversely affected many associate degree nursing programs. Subsequent activities by the Chancellor's Office acknowledging the unique needs of nursing students may correct this.

The Task Force concluded that this multi-dimensional problem requires bold action if the maximum numbers of students are to graduate from pre-licensure nursing programs, successfully pass the NCLEX-RN, and become licensed as registered nurses in California. Recommendations to improve the pass rates were made to the many groups involved in preparing registered nursing students, testing them, and licensing them.

ISSUE #18: The overall pass rate for international graduates in fiscal year 2000/01 was only 30.3%.

Question #18 for the Board: *Explain the reason for such a low pass rate for international graduates and what direction are these applicants given to improve their chances of passing the NCLEX-RN exam.*

Background: There was no explanation given by the Board on why the pass rate for international graduates is so low or what alternatives to licensure or information may be provided to international candidates to improve their chances of eventually passing the national examination.

ISSUE #19: There are a substantial number of applications for licensure each year, but only about two-thirds of those actually receive a license.

Question #19 for the Board: *Please explain why out of 32,400 applications received, only about two-thirds of those who apply become licensed and only about 5,000 sit for the examination?*

Background: In fiscal year 2001/02, there were approximately 32,400 applications received for licensure, approximately 18,500 licenses were issued, and approximately 5,000 actually sat for the NCLEX-RN examination.

LICENSURE ISSUES

ISSUE #20: The Board is experiencing an increase in the amount of time it takes to process applications for the examination.

Question #20 for the Board: *Why will it now take longer for the Board to process the candidate's application and does the Board have any recommendations on the way this process could be more streamlined?*

Background: There was, up until fiscal year 2000/01, a steady decrease in the "application to eligibility for examination" phase of the licensing process (from 267 day in 1996/97, to 156 days in 2000/01). However, fiscal year 2001/02 shows an increase in this phase of the process (back up to 169 days) and the Board indicates that it will now continue to increase.

ISSUE #21: There has been a dramatic increase in the number of temporary licenses (out-of-state licensees) and interim permits (examination candidates) issued by the Board over the past five years.

Question #21 for the Board: *What are the reasons for this significant increase in both temporary licensees and interim permits issued and what portion of these pre-licensure candidates successfully complete all requirements for licensure?*

Background: The Board regulates interim permittees, i.e., applicants who are pending licensure by examination, and temporary licensees, i.e., out-of-state applicants who are pending licensure by endorsement. The interim permit allows the applicant to practice registered nursing under the supervision of a registered nurse. Similarly, the temporary license enables the applicant to practice registered nursing pending a final decision on the licensure application. The Board may issue a temporary license to practice nursing for a six-month period, thereby allowing the applicant to work as a registered nurse pending issuance of a permanent license. The temporary license can be re-issued twice, for a total of 18 months, if necessary.

In fiscal year 1996/97, the Board issued about 2,400 temporary licenses and about 4,000 interim permits. As of fiscal year 2001/02, the Board issued about 9,100 temporary licenses and about 8,000 interim permits. The Board indicates that the increase in the number of temporary licenses issued is reflective of registered nurses coming into California to accept temporary nursing assignments resulting from work stoppages and to provide temporary staffing due to regularly occurring nursing shortages.

CONTINUING COMPETENCY ISSUES

ISSUE #22: Not all nurses are audited for compliance with continuing education (CE) requirements, however for those audited and found in non-compliance, they could be required to stop practicing until they fulfill the CE requirement.

Question #22 for the Board: *How are nurses chosen to be audited and approximately how many licensed nurses per year do not meet their continuing education requirements and are directed to stop practicing? Under what circumstances would the nurse be cited and fined for not complying with the continuing education requirements? Are there other alternatives that could be used rather than requiring a nurse to stop practicing?*

Background: Since 1978, the Board has required registered nurses to complete a total of 30 contact hours of continuing education biennially to renew their licenses in the active status, which allows them to practice nursing. The primary route for completion of the hours is to take course(s) offered by one of the over 3,300 Board-approved Continuing Education Providers (CEPs). The Board monitors both registered nurses and CEPs for compliance with statutory and regulatory requirements. During the past five fiscal years, over 11,000 registered nurse-renewal applicants have been audited. Over 99% of audited registered nurses provided documentation of acceptable course content and continuing education contact hours. Reasons for not providing appropriate documentation range from attendance at a course that is not verified by a CEP, documents destroyed in an earthquake, fire or flood, or the registered nurse failed to retain the documents for four years as required by law. Those in

noncompliance are either warned and re-audited after their next renewal cycle or are referred to the Enforcement Program. The Board indicates that registered nurses that have not met the continuing education requirements for license renewal are directed to stop practicing as a registered nurse until the continuing education requirements are met.

ISSUE #23: Are there improvements that could be made to the current continuing education program for nurses?

Question #23 for the Board: *Are there new approaches the Board is considering for the continuing education of nurses?*

Background: In October 2000, the Board staff did an extensive review of the continued competence issue and initiatives. New approaches, such as re-testing and work performance evaluation, are being considered. The Board recognizes many of the suggested approaches are still in the pilot-testing phase and that further validation is clearly needed before any additional continued competence requirements are mandated. The Board continues to monitor and analyze the proposed approaches on a regular basis.

ENFORCEMENT ISSUES

ISSUE #24: It is taking on average about three years from the time a complaint is filed till final disciplinary action is taken against the licensee.

Question #24 for the Board: *Please explain why it is taking on average about three years to complete disciplinary action against a licensee and why the time frame for investigation of complaints has increased to almost 500 days on average and why it is taking on average 200 days from the completed investigation till formal charges are filed by the Attorney General? What is the current backlog of cases at the Attorney General's Office and how does the Board intend to address this backlog?*

Background: The average number of days from receipt of complaint to final disposition of the case ranged from 1,073 days in fiscal year 1997/98, to 1,237 days in 1998/99, and was 1,191 in 2001/02. This means that it is taking on average about three years to pursue disciplinary action against a registered nurse. The Board indicates that the most dramatic and persistent increase in time frames occurred in the investigation phase.

ISSUE #25: The Board still has difficulty in collecting cost recovery.

Question #25 for the Board: *What are the problems with collecting the amount of cost recovery ordered and does the Board have any recommendations how collection could be improved?*

Background: In every accusation filed since January 1996, the Board has included a pleading for cost recovery pursuant to Business and Professions Code Section 125.3. Since that time the Board has

collected a total of $639,000. However, this is only about one-fourth of the amount of cost recovery ordered by the administrative law judge.

ISSUE #26: It is unclear how the Board monitors nurses who are participating in its Diversion Program to assure they are in compliance with their rehabilitation plan and what follow-up is done after they leave the program.

Question #26 for the Board: *How does the Board monitor nurses both participating in the diversion program and once they return to the workplace?*

Background: Nearly 900 registered nurses have successfully completed the Board's Diversion Program since it began in 1985. Several factors, as explained by the Board, contribute to the success of the program including:

- Early and immediate intervention, in lieu of the lengthier time involved in disciplinary cases.
- Use of strict eligibility criteria to ensure only appropriate applicants are admitted to the program. Eligibility criteria include: no patient harm, no sales of drugs, no sex offenders, no prior discipline for the same type of offense, and no prior termination from a diversion program.
- Prohibiting the registered nurse from resuming practice until deemed safe to practice by a panel of experts.
- Development of an individualized rehabilitation plan that becomes a contract between the participant and the Diversion Program. The plan is developed by a Diversion Evaluation Committee (DEC), which is comprised of experts in the field of chemical dependency and mental illness.
- Close monitoring of participants for compliance with their rehabilitation plan.
- Requirement to have a worksite monitor prior to job approval.
- Participants' involvement in Nurse Support Groups.
- Stringent criteria for determining successful completion. To successfully complete the Diversion Program, the participant must demonstrate a change in lifestyle that supports continuing recovery and have a minimum of 24 consecutive months of clean body-fluid tests. A participant with a history of mental illness must demonstrate the ability to identify the symptoms or triggers of the disease and be able to take immediate action to prevent an escalation of the disease.

DISCLOSURE POLICY ISSUE

ISSUE #27: The Board's Complaint Disclosure Policy may need to be updated because of the Department's recently issued "Recommended Minimum Standards for Consumer Complaint Disclosure."

Question #27 for the Board: *Has the Board considered re-reviewing its Disclosure Policy in light of the Department's recently issued disclosure policy? When is disciplinary action taken by the Board finally disclosed to the public?*

Background: The Board's Complaint Disclosure Policy was last revised and adopted by the Board September 7, 2001. Pursuant to the policy, the Board releases complaint information once an accusation is prepared by the Attorney General's Office and filed by the Board, with certain exceptions. In the following situations, complaint information is disclosed in lieu of or prior to the filing of an accusation:

- Citations, fines, and orders of abatement are subject to public disclosure once they become final.
- Interim suspension orders are disclosed to the public after an administrative hearing upholding the suspension.
- Suspensions or practice restrictions imposed pursuant to Penal Code Section 23 are disclosed after the court decision.

A summary of a complaint may be provided to the subject of the complaint or the subject's attorney under Section 800(c) of the Business and Professions Code. The Board may elect not to disclose investigative files under Section 6254(f) of the Public Records Act; Section 6254(c) exempts disclosure of certain personal information.

The Board has based its disclosure policy on legal advice and concerns about consumer protection, investigative integrity, and basic privacy issues pursuant to:

1. Public Records Act (Government Code Section 6250 et seq.)
2. Information Practices Act (Civil Code Section 1798 et seq.)
3. California Constitutional Right to Privacy (California Constitution, Article I, Section 1)

On July 16, 2002, the Department distributed its "Recommended Minimum Standards for Consumer Complaint Disclosure." Other boards have begun reviewing their current disclosure policies in light of this document and suggested standards to be followed.

BOARD, CONSUMER AND LICENSEE USE OF THE INTERNET ISSUES

ISSUE #28: Are there other improvements the Board can make to enhance their internet capabilities?

Question #28 for the Board: *What has the Board done to enhance its internet capabilities so as to provide improved services and better information to consumers and licensees? What other improvements does the Board expect to make in the future?*

Background: One of the major changes the Board points, over the past six years, has been its increased utilization of Internet and computer technology to provide services and information to the public and Board licensees. These include:

- A Board Web page, www.rn.ca.gov, which receives an average of 2,500 visitors per day.
- Nurse Web site, www.nurse.ca.gov, which assists in the recruitment and retention of registered nurses and links to other sites providing information about the profession of registered nursing.
- Online license verification for registered nurses and continuing education providers, with over 444,000 licenses verified.
- Online application process for licensure by endorsement.
- Online license and advanced practice certificate renewal.

ISSUE #29: The Board currently has a Web site housed at the Department of General Services.

Question #29 for the Board: *When will the Web site be transferred to the Board to maintain and update?*

Background: In 2002, the Board created a Web site to assist in the recruitment and retention of registered nurses. The Web site also provides the latest updates on the California Nurse Workforce Initiative. The Web site is currently housed at the Department of General Services.